

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LENA LASHER,

Plaintiff,

vs.

NEBRASKA STATE BOARD OF
PHARMACY (NE BOP), State of
Nebraska, Lincoln, Nebraska 68508; and
THOMAS L. WILLIAMS, MD, Chief
Medical Officer Director, Division of
Public Health State of Nebraska
Department of Health and Human
Services Lincoln, Nebraska 68508;

Defendants.

4:17CV3125

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On October 30, 2017, the court entered an order denying Plaintiff's renewed motion to proceed in forma pauperis ("IFP"). ([Filing No. 10](#).) Subsequent to the entry of the court's order, the clerk's office filed a letter received from Plaintiff regarding her motion to proceed IFP. ([Filing No. 11](#).) Upon examination of Plaintiff's letter, the court finds it necessary to vacate its previous orders ([Filing No. 8](#); [Filing No. 10](#)) denying Plaintiff's motions to proceed IFP and grant said motions.

Prisoner plaintiffs are required to pay the full amount of the court's \$350.00 filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. [28 U.S.C. § 1915\(b\)](#). The Prison Litigation Reform Act "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997); *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 (D. Neb. 2001).

The court previously denied Plaintiff's requests to proceed IFP based on its understanding that Plaintiff had average monthly deposits of \$3,827.60 in the six months preceding the filing of her Complaint. Upon review of the information provided by Plaintiff in her October 30, 2017 letter, the court now understands that the "National 6 Months Deposits" of \$3,827.60 represents the total deposits received in the six months preceding the filing of Plaintiff's Complaint, not the average monthly deposits. ([Filing No. 11 at CM/ECF pp.1](#), 4, 7.) Consequently, Plaintiff's average monthly deposits were \$637.93, which is greater than her average monthly balance of \$197.08.

Therefore, pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), Plaintiff must pay an initial partial filing fee in the amount of 20 percent of Plaintiff's average monthly deposits for the six months preceding the filing of the Complaint. Here, the court finds the initial partial filing fee is \$127.59, based on average monthly deposits in the amount of \$637.93. Plaintiff must pay this initial partial filing fee within 30 days or her case will be subject to dismissal. Plaintiff may request an extension of time if one is needed.

In addition to the initial partial filing fee, Plaintiff must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." [28 U.S.C. § 1915\(b\)\(2\)](#). The statute places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

[28 U.S.C. § 1915\(b\)\(2\)](#). Therefore, after payment in full of the initial partial filing fee, Plaintiff's institution must collect the remaining installments of the filing fee and forward the payments to the court.

Plaintiff is advised she will remain responsible for the entire filing fee, as long as she is a prisoner, even if the case is dismissed at some later time. See *In re Tyler*, 110 F.3d at 529-30; *Jackson*, 173 F. Supp. 2d at 951.

IT IS THEREFORE ORDERED that:

1. The court's orders dated October 18, 2017, and October 30, 2017, ([Filing No. 8](#); [Filing No. 10](#)) are vacated.

2. Plaintiff's Motions for Leave to Proceed IFP ([Filing No. 6](#); [Filing No. 9](#)) are granted.

3. Plaintiff must pay an initial partial filing fee of \$127.59 within 30 days, unless the court extends the time in which she has to pay in response to a written motion.

4. After payment of the initial partial filing fee, Plaintiff's institution must collect the additional monthly payments in the manner set forth in [28 U.S.C. § 1915\(b\)\(2\)](#), quoted above, and forward those payments to the court.

5. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff's institution.

6. The clerk's office is directed to set a pro se case management deadline in this case using the following text: **November 30, 2017**: initial partial filing fee payment due. The clerk's office is further directed to terminate the previous pro se

case management deadlines of November 17, 2017, and November 29, 2017: deadline for Plaintiff to pay \$400.00 filing fee.

7. Plaintiff is advised that, following payment of the initial partial filing fee, the next step in Plaintiff's case will be for the court to conduct an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#). The court will conduct this initial review in its normal course of business

Dated this 31st day of October, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge